

§ 107.1120

13 CFR Ch. I (1–1–10 Edition)

You must first apply for SBA's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. See §§ 107.1200 through 107.1240.

(c) *Where to send your application.* Send all Leverage applications to SBA, Investment Division, 409 Third Street, S.W., Washington, DC 20416.

[63 FR 5868, Feb. 5, 1998, as amended at 64 FR 70996, Dec. 20, 1999]

§ 107.1120 General eligibility requirements for Leverage.

To be eligible for Leverage, you must:

(a) Demonstrate a need for Leverage, evidenced by your investment activity and a lack of sufficient funds for investment. For your first issuance of Leverage, if you have invested at least 50 percent of your Leverageable Capital, you are presumed to lack sufficient funds for investment.

(b) Have adequate Private Capital to satisfy the requirements for financial viability under § 107.200.

(c) Meet the minimum capital requirements of § 107.210, subject to the following additional conditions:

(1) If you were licensed after September 30, 1996 under the exception in § 107.210(a)(1), you will not be eligible for Leverage until you have Regulatory Capital of at least \$5,000,000.

(2) If you were licensed on or before September 30, 1996, and have Regulatory Capital of less than \$5,000,000 (less than \$10,000,000 if you wish to issue Participating Securities):

(i) You must certify in writing that at least 50 percent of the aggregate dollar amount of your Financings extended after September 30, 1996 will be provided to Smaller Enterprises (as defined in § 107.710(a)); and

(ii) You must demonstrate to SBA's satisfaction that the approval of Leverage will not create or contribute to an unreasonable risk of default or loss to the United States government, based on such measurements of profitability and financial viability as SBA deems appropriate.

(d) For any Leverage draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess

of \$150 million, certify that none of the Licensees has a condition of Capital Impairment. *See also* § 107.1150(b).

(e) For any Leverage request pursuant to § 107.1150(c)(2)(i), certify that at least 50 percent (in dollars) of your Financings made on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(f) For any Leverage request pursuant to § 107.1150(c)(2)(ii), certify at least 50 percent (in dollars) of the Financings made by each Licensee under Common Control on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(g) Certify in writing that you are in compliance with the requirement to finance Smaller Enterprises in § 107.710(b).

(h) Show, to the satisfaction of SBA, that your management is qualified and has the knowledge, experience, and capability necessary for investing in the types of businesses contemplated by the Act, the regulations in this part and your business plan.

(i) Be in compliance with the regulations in this part.

(j) If required by SBA, have your Control Person(s) assume, in writing, personal responsibility for your Leverage, effective only if such Control Person(s) participate (directly or indirectly) in a transfer of Control not approved by SBA.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5868, Feb. 5, 1998; 64 FR 70996, Dec. 20, 1999; 74 FR 33916, July 14, 2009]

§ 107.1130 Leverage fees and additional charges payable by Licensee.

(a) *Leverage fee.* You must pay a leverage fee to SBA for each issuance of a Debenture or Participating Security. The fee is 3 percent of the face amount of the Leverage issued.

(b) *Payment of leverage fee.* (1) If you issue a Debenture or Participating Security to repay or redeem existing Leverage, you must pay the leverage fee before SBA will guarantee or purchase the new Leverage security.

(2) If you issue a Debenture or Participating Security that is not used to repay or redeem existing Leverage, SBA will deduct the leverage fee from